

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FIRE PROTECTION SERVICE, INC.
Plaintiff,

v.

SURVITEC SURVIVAL PRODUCTS, INC.
d/b/a SURVITEC GROUP,
Defendant.

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Civil Action No. _____

DEFENDANT SURVITEC SURVIVAL PRODUCTS, INC.'S NOTICE OF REMOVAL

Defendant Survitec Survival Products, Inc. d/b/a Survitec Group ("Survitec") hereby removes this action from the 113th Judicial District Court of Harris County, Texas to this Court pursuant to and in accordance with 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for this removal, Survitec states as follows:

I. FACTS

1. Plaintiff Fire Protection Services, Inc. ("FPS") commenced a civil action against Survitec in the 113th Judicial District Court of Harris County, Texas, and served a copy of Plaintiffs' Original Petition and Request for Disclosure (the "Petition") on Survitec through the Texas Secretary of State on or about May 17, 2019. To date, Survitec has failed to receive service by the Secretary of State of Texas. An Index of State Court Documents Filed with Defendant's Notice of Removal is attached hereto as **Exhibit 1**.

2. The Petition alleges that Survitec violated the Texas Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act (the "FPA"), TEX. BUS. & COMM.

CODE § 57.001 *et seq.*, by failing to repurchase equipment from FPS after terminating the parties' distribution agreement.

3. The Petition alleges Plaintiff is a domestic corporation doing business in Texas (*See* Petition, at ¶ 3.1), with a principal place of business in 8050 Harrisburg Blvd., Houston, Texas, 77012. Accordingly, Survitec is informed and believes that Plaintiff was a citizen of the State of Texas at the time its Petition was filed and served and that Plaintiff continues to be a citizen of the State of Texas as of the filing of this Notice of Removal.

4. The Petition alleges that Survitec is a nonresident foreign corporation which engages in business in Texas, but does not maintain a regular place of business in this state. *See* Petition, at ¶ 3.2. Survitec is a Delaware corporation with a principal place of business in 11070 Cabot Commerce Circle, Bld. 3, Suite 100, Jacksonville, Florida 32226. Therefore, there is complete diversity between the parties as they are citizens of different States. 28 U.S.C. §§ 1332(a)(1), 1446(c).

5. The Petition sets out that the amount in controversy is "the amount of at least \$173,947.67, as well as accrued interest at the maximum rate allowed by law, and costs of court, including attorney's fees." *See* Petition, at ¶ 7.1. Therefore, the amount in controversy exceeds \$75,000. 28 U.S.C. § 1446(c)(2)(A)(ii).

6. No previous removal of this case has been attempted or effected.

II. PAPERS FROM REMOVED ACTION

7. As required by 28 U.S.C. § 1446(a), Survitec has attached copies of the Petition as well as all other process or pleadings, currently on file with the 113th Judicial District Court of Harris County. *See Exhibit 2*. No other process or pleadings have been served upon Survitec in this action.

8. Plaintiff did not request a jury trial.
9. No further proceedings have occurred in the state court action.

III. TIMELINESS OF REMOVAL

10. This Notice of Removal is timely because it is filed within thirty (30) days after service of the Petition on Survitec, in accordance with 28 U.S.C. § 1446(b)(1).

IV. VENUE

11. Venue of this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division encompassing the state court where the action is pending.

V. NOTICE OF FILING OF NOTICE OF REMOVAL

12. In accordance with 28 U.S.C. § 1446(d), and to effect removal, Survitec will file a true and correct copy of this Notice of Removal with the Clerk of the 113th Judicial District Court of Harris County, Texas.

VI. CONCLUSION

WHEREFORE, Defendant Survitec Survival Products, Inc. d/b/a Survitec Group respectfully removes this action from the 113th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Dated: June 14, 2019.

Respectfully submitted,

FOLEY GARDERE
Foley Lardner LLP

By: /s/ Peter A. McLauchlan

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D/B/A SURVITEC GROUP

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record as set forth below, via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically a Notice of Electronic Filing.

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/s/ Peter A. McLauchlan
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